IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

-

WRIT PETITION NO : 7931 of 1996

Between:

P.Vijaya Narayana Reddy, S/O late P.G.Madhava Reddy,
r/o D.No.40-37-L-13, River view colony, Kurnool.

..... PETITIONER

AND

1.Indian Overseas Bank, Central Office, 762, Annasalai,
Madras 600 002, rep., by its Chairman cum Managing Director.
2. The Regional Manager, Indian Overseas Bank, Regional Office,
Hyderabad.
3. The Branch Manager, Indian Overseas Bank, Kurnool Branch,
park Road, Kurnool – 518 001.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction declaring that Regulation 22 of the Indian Overseas Bank (Employees') Pension Regulations, 1995, treating resignation of an employee on par with the case of dismissal or removal or termination of an employee from the service of the Bank as arbitrary and violative of Article 14 of the Constitution of India and further declare that the fixation of date 1-11-1993 in Regulation 29(1) of the above said pension Regulations is arbitrary and violative of Article 14 of the Constitution of India and pension on voluntary retirement ought to have been applied to those employees who sought for voluntary retirement

between 1-1-1986 and 1-11-1993, are entitled to be paid pension under the Regulation – 29 and further treat the resignation submitted by the petitioner on 7-10-1991 must be deemed that he had voluntarily retired from service with effect from 7-10-1991 and be entitled to pension.

Counsel for the Petitioner:MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents: MR.M.V.DURGA PRASAD

The Court made the following :

ORDER:

The petitioner was an officer of the Indian Overseas Bank, a Nationalised Bank and a 'State', within the meaning of Article 12 of the Constitution of India. He entered service in 1968 – 15.11.1968- as a Shroff/Typist in the Bank. While serving as an Officer, he suffered ill health and was not in a position to continue in active service. According to him, he went through the provisions of the Indian Overseas Bank (Officers) Service Regulations, 1979 and found no provision for availing voluntary retirement. In the circumstances he tendered resignation on 7-10-1991, which was accepted on 20-12-1991. As he did not give fair notice for availing the resignation, in the payment of his terminal benefits, the emoluments payable to him for the three months notice period, were deducted. On this account, however, there is no grievance.

2.By a circular of the Bank dated .27-4-1994, options were called for, including from employees who had retired on or after 1-1-1986 and before 31-10-1993 to opt for the benefits of the Indian Overseas Bank Employees' Pension scheme. The option could be exercised within the period specified, and once the option is exercised, is irrevocable. The petitioner submitted his option for the benefits of the pension scheme on 5-5-1994, within the time stipulated for the exercise of options. The fact that the petitioner did so exercise his option, and within time, is not in dispute. To effectuate and regulate the terminal benefits of the Indian Overseas Bank employees including the pension benefits as available under

the pension scheme for which options were solicited, the respondent Bank

made the Indian Overseas Bank (Employees) Pension Regulations, 1995 (for short Regulations).

3. As the petitioner was denied the pensionary benefits under the scheme for which he had opted, he made enquiries with the relevant officials of the respondent Bank reminding them of his option and enquiring as to the status of his pension process. By an order of the respondent Bank dated 13-1-1996, the option earlier submitted by the petitioner was returned to him with an endorsement that as he had resigned from service, he was not eligible for pension under the Regulations.

4. What is not in dispute is, that the petitioner has the requisite and qualifying service which entitles him to some quantum of pension under the pension scheme for which options were called for and he had exercised his option. It is also not disputed that the cessation of his active service from the respondent Bank falls within the period during which employees who have ceased to be in the service of the Bank are also entitled to the benefits of the pension scheme. The fact as already stated that he had exercised an option in a regular format within time for submission of the options, is also not in dispute. The singular factor on the basis of which the respondent Bank sustains its decision to reject the petitioner's claim for pensionary benefits is of Regulation 22 of the Regulations. Regulation 22 reads as under:

Forfeiture of Service:-

1. *Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits;*
   (2) An interruption in the service of a Bank employee entails forfeiture of his past service, except in the following cases, namely:-

(a)authorized leave of absence;
(b) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the bank employee dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension;
(c) transfer to non-qualifying service in an establishment under the control of the Government or Bank if such transfer has been

ordered by a competent authority in the public interest;
(d) joining time while on transfer from one post to another.
(3) Notwithstanding anything contained in sub-regulation (2), the appointing authority may, by order, commute retrospectively the periods of absence without leave at extraordinary leave.
(4) (a) In the absence of a specific indication to the contrary in the service record an interruption between two spells of service rendered by a bank employee shall be treated as automatically condoned and the pre-interruption service treated as qualifying service;
(b) Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike:
Provided that before making an entry in the service record of the Bank employee regarding forfeiture of

past service because of his participation in strike, an opportunity of representation may be given to such bank employees.

5. Clause I of Regulation 22 specifies that resignation, dismissal, removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. Clause (2) of the Regulation 22, however, sets out the exceptions to interruptions of service in the Bank that entail forfeiture of past service. Included in the exceptions, is suspension followed by immediate reinstatement, including a situation where there is a penalty of reduction in rank imposed. Even where an employee is compulsorily retired while under suspension, there would be no forfeiture of past service, and therefore, such an employee would be entitled for the pensionary benefits. Even the period of unauthorized absence which could normally qualify for being characterized as an interruption in the service of bank and thus entitle forfeiture of past service could be retrospectively commuted by the appointing authority, thus enabling counting of such period for continuity of service and therefore, for pensionary benefits.
6. Resignation from service, albeit with an earlier impeccable record of service however, would without exception entail forfeiture of the entire past service and render an employee ineligible for any pension, whatsoever.

7. As the petitioner was denied pensionary benefits on the basis of regulation 22 of the Regulations, he has instituted this writ petition *inter*

alia for a declaration that Regulation 22 of the Regulations is invalid and also sought the consequential benefit of payment of pension.

8. It also requires to be noticed that under Regulation 36 of the Regulations, there is an obligation to extend a minimum/specified quantum of pension including for part time employees who have retired before 1-11-1993 as well as those employees those who had retired on or after 1-11-1993. Further, Regulation 31 of Regulations empowers an authority higher than the authority competent to dismiss, remove or terminate an employee from service, to sanction a compassionate allowance even to an employee who is dismissed, removed or terminated from service. Normally, imposition of such penalties entails forfeiture of the pension and the compassionate allowance when sanctioned under Regulation 31 as specified, shall not be less than the amount of minimum pension payable

under Regulation 36.

9. Normatively, in the text and structure and the administrative philosophy underlying the pension regulations, the total denial of pension to persons who have resigned from the service of the Bank without conferring any power or descretion in the appointing authority or at any level in the hierarchy of the Bank management, to mark an exception for the grant of pensionary benefits to persons who have resigned could perhaps legitimately be challenged as an arbitrary prescription. This is what the petitioner has done in the writ petition.

10. Sri.Nagarjuna Reddy, learned counsel for the petitioner placed reliance on a judgment of a Division Bench of Delhi High Court in C.W.P.No.7016/2001 Dated .2-9-2002 in ASHWANI KUMAR SHARMA v ORIENTAL BANK OF COMMERCE. The factual matrix that fell for consideration by Delhi High Court was as under:

The petitioner while working as an officer in the Oriental Bank of Commerce opted for the benefits of the employees pension scheme, 1993. The pension Regulations 1995 were also in force for the employees of the respondent Bank therein. On account of his personal circumstances, after an extended period of

leave and as he was still unable to return to active service, particularly on account of his wife's illness, the petitioner submitted his resignation on 1-8-1998, which was accepted by the Bank on 24-9-1998. The petitioner's application for the pension benefits was, however, rejected on the basis that he had forfeited his past service on resignation in view of Regulation 22 of the Oriental Bank of Commerce (Employees) Regulation, 1995, the provisions of which are *ipsissima verba* Regulation 22 of the Regulations in the case on hand. The Delhi High Court, after a critical and painstaking analysis of a large number of precedents and various underlying concepts that mark a distinction between cessation from service pursuant to a penalty imposed and cessation from service voluntarily by resignation/compulsory retirement, granted relief to the petitioner and another officer similarly circumstanced. The Delhi High Court categorically concluded that on consideration of the relevant circumstances it would be legitimate to infer that resignation from service is akin and almost identical and indistinguishable on all relevant parameters to voluntary retirement, and therefore, service benefits including pensionary benefits payable on voluntary retirement could not be withheld in the cases of resignation from service subject of course to the fact that the employee who has so ceased to be in the service of the bank on resignation, had the required service that entitles him to the pensionary benefits in accordance with the governing pension schemes/regulations.

11. Sri.Nagarjuna Reddy with considerable emphasis contended that the ratio of the judgment of the Delhi High Court operates to entitle the petitioner herein for the relief. He also contended that though this judgment is of persuasive value, the ratio of the judgment is compelling and warrants acceptance.

12. Sri Durga Prasad on behalf of the respondent Bank relied on a decision of the Supreme Court in Reserve Bank of India Vs. Cecil Dennis Solomon. Regulation 18 of the Reserve Bank of India (Pension) Regulations, 1990 fell for the consideration of Supreme Court in this case. The Nagpur bench of the High Court of Bombay had allowed the writ petitions. Employees who tendered resignations prior to the operation of the pension regulations and had later

opted for the benefits of the pension regulations were denied pensionary benefits on the basis of regulation 18 of Regulations which administered forfeiture of the entire past service on resignation of an employee, and consequently disqualified such an employee, to the benefits of pension. On Appeal, the Supreme Court reversed and held that superannuation, voluntary retirement, compulsory retirement and resignation connote distinct and insular fact situations in service jurisprudence. Though voluntary retirement and resignation involve voluntary acts on the part of an employee to leave service, they operate differently; while resignation is at will and could be tendered at any time, voluntary retirement could be sought only after a prescribed period of qualifying service. Voluntary retirement also requires the permission of the employer to avail the benefits on retirement, and that it is not the case of resignation from service. As conceptually, voluntary retirement and resignation are distinct events, they legitimately come with different packages of benefits, pointed out by the Supreme Court while allowing the appeal of the Reserve Bank of India. Sri Durga Prasad, learned counsel for the respondent contends that as the Regulation identical to Regulation 22 of the Indian Overseas Bank (Regulation), 1995 challenged herein fell for consideration of the Supreme Court and the distinction marked out in the impugned regulation between voluntary retirement and resignation was upheld, the petitioner would not be entitled to any relief.

13. In view of the decision of the Supreme Court in Reserve Bank of India case (1 supra), no case is made out for invalidation of Regulation 22 of the Indian Overseas Bank (employees) Pension Regulations, 1995, and consequently the petitioner is not entitled to any relief.

14. The writ petition is accordingly dismissed, but in the circumstances, without costs.

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16-08-2004

sh/pvks

To

1.The chairman cum Managing Director,Indian Overseas Bank,
Central Office, 762, Annasalai, Madras – 600 002.
2.The Regional Manager, Indian Overseas Bank, Regional Office,
Hyderabad.
3. The Branch Manager, Indian Overseas Bank, Kurnool Branch,
Park Road, Kurnool – 518 001.

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THE HON'BLE MR JUSTICE GODA RAGHURAM

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Dated:16-08-2004